Supreme Court of Minnesota.

MINNEAPOLIS THRESHING MACHINE CO. v. DAVIS.

A subscription by a number of persons to the stock of a corporation, to be thereafter formed by them, constitutes, *first*, a contract between the subscribers themselves to become stockholders when the corporation is formed, upon the conditions expressed in the agreement, and as such it is binding and irrevocable from the date of the subscription; *second*, it is in the nature of a continuing offer to the proposed corporation, which, upon acceptance by it, becomes as to each subscriber, a contract between him and the corporation.

A promoter of a proposed corporation, who solicits and procures stock subscriptions upon a written subscription paper, is the agent of the body of the subscribers to hold the subscriptions until the corporation is formed, and then turn them over to it without any further act of delivery on the part of the subscribers. Hence, a delivery of a subscription paper to such promoter is a complete delivery as to the subscriber making such delivery, so that it becomes, *eo instanti*, a binding contract as between the subscribers.

Where a person subscribes to the stock of the proposed corporation and delivers the subscription to such promoter, and other persons, without notice of any oral condition attached to such delivery, also subscribe to the stock and pay the same in, and in reliance on the subscriptions the corporation is organized, engages in its business, expends large sums of money, and contracts liabilities therein, such person, when sued for instalments due on his stock subscription, will not be allowed to defeat a recovery by showing that he attached a secret oral condition to the delivery of his subscription to the promoter.

Appeal from an order of the District Court for Hennepin County, refusing a new trial after judgment for the defendant.

The material facts are stated in the opinion of the Court.

C. M. Pond, for appellant.

Ferguson & Kneeland, for respondent.

MITCHELL, J., January 31, 1889. This was an action to recover instalments due on subscriptions to stock of the plaintiff. The facts fully appear from the findings of the court in connection with exhibits A and B attached to the complaint.

Those material for present purposes are, that a scheme having been started to organize a manufacturing corporation with $250,000 capital, whose works should be located at Junction City, near Minneapolis, and one McDonald having proposed that, if the citizens of Minneapolis would subscribe $190,000 to the capital stock, he would subscribe the remaining $60,000, one Janney, a promoter, but not a subscriber to the stock of

the proposed corporation, acting as a voluntary solicitor, having with him the subscription paper (Exhibits A and B), about April 1st, 1887, proceeded to canvass for subscriptions to the stock of the proposed corporation on the terms and conditions embodied in the paper. He first applied to defendant, who subscribed to $5,000 of stock. Afterwards, and about the same date, other citizens respectively subscribed to the stock, on the same paper, to the aggregate amount, including defendant's subscription, of $190,000, of which over $65,000 has been paid in to plaintiff. Thereupon McDonald, in accordance with his proposition, subscribed the remaining $60,000, which he has paid up in full. All the conditions expressed in the written subscription (Exhibit A), having been fully performed and complied with, the proposed corporation was afterwards, about April 25th, 1887, organized, and these subscriptions to its stock delivered over to it. The corporation, acting in good faith upon such subscriptions, including that of defendant, expended large sums of money in locating and constructing its works, and entered into large contracts, and incurred liabilities to the amount of over $75,000. During all this time the corporation had no notice or knowledge of any condition being attached to defendant's subscription, other than those expressed in the subscription paper itself. Neither is it found or claimed that any of the other subscribers to the stock had any such notice or knowledge. Defendant was not present at the organization of the corporation, and never attended or took part in any of its meetings, and had no notice or knowledge that the subscription paper had been transferred or delivered over to plaintiff, or that plaintiff relied on it, until about November, 1887, just prior to the commencement of this action.

Upon the trial, the defendant was permitted, against plaintiff's objection and exception, to testify that he signed or subscribed to the stock only upon the express oral condition and agreement then had between him and Janney, that the latter should retain in his possession said agreement with his name signed thereto, and not deliver it to any one, or use it in any way, until certain four persons should subscribe to the stock, each in the sum of $5,000; that Janney took the agreement from defendant on that express condition and understanding,

and not otherwise; that none of these four persons ever did subscribe to the stock of the plaintiff; and that defendant never authorized Janney or any one to deliver said agreement to any one except upon the condition referred to. The Court found the facts to be in accordance with the testimony, and upon that ground found as a conclusion of law, that defendant never became a subscriber to the plaintiff's stock. The competency of this evidence is the sole question in this case. Under the elementary rule of evidence that a written agreement cannot be varied or added to by parol, it is not competent for a subscriber to stock to allege that he is but a conditional subscriber. The condition must be inserted in the writing to be effectual. This rule applies with special force to a case like the present, where to allow the defendant now to set up a secret parol arrangement by which he may be released, while his fellow-subscribers continue to be bound, would be a fraud, not only upon them, but upon the corporation which has been organized on the faith of these subscriptions, and upon its creditors. The defendant, of course, does not attempt to controvert so elementary a rule as the one suggested, but contends that the effect of this evidence was not to vary or contradict the terms of the writing, but to prove that there was never any delivery of it, and hence that there never was any contract at all, delivery being pre-requisite to the very existence of a contract. His claim is that the subscription paper was given to and received by Janney merely as an escrow, or as in the nature of an escrow, only to be delivered or used upon the performance of certain conditions precedent, and that until they were performed there could be no valid delivery.

In determining this question, it becomes important to consider the nature of a subscription to the stock to a proposed corporation, and the relation of the different parties to each other, under the facts of this case. A subscription by a number of persons to the stock of a corporation to be thereafter formed by them, has in law a double character. *First*, it is a contract between the subscribers themselves to become stockholders, without further act on their part, immediately upon the formation of the corporation. As such a contract, it is binding and irrevocable from the date of the subscription, (at

least in the absence of fraud or mistake,) unless cancelled by consent of all the subscribers before acceptance by the corporation. *Second*, it is also in the nature of a continuing offer to the proposed corporation, which, upon acceptance by it after its formation, becomes as to each subscriber, a contract between him and the corporation: 1 Morawetz on Priv. Corp., sec. 47 *et seq.*; *Red Wing Hotel Co.* v. *Friedrich* (1879), 26 Minn. 112. Janney, the promoter who solicited and obtained the subscriptions, occupied the position of agent for the subscribers as a body, to hold the subscriptions until the corporation was formed in accordance with the terms and conditions expressed in the agreement, and then turn it over to the company without any further act of delivery on part of the subscribers. The corporation would then become the party to enforce the rights of the whole body of subscribers.

It follows, then, that considering the subscription as a contract between the subscribers, a delivery to Janney by any subscriber, was a complete and valid delivery, so that his subscription became, *eo instanti*, a binding contract. The case stands precisely as a case where a contract is delivered by the obligor to the obligee. It cannot therefore be treated as a case where a writing has been delivered to a third party in escrow. The defendant, however, attempts to bring the case within the rule of *Westman* v. *Krumweide* (1883), 30 Minn. 313, in which this Court held that parol evidence was admissible to show that a note delivered by the maker to the payee, was not intended to be operative as a contract from its delivery, but only upon the happening of some contingency, though not expressed by its terms; that is, that the delivery was only in the nature of an escrow. We so held upon what seemed the great weight of authority, although the doctrine, even to the extent it was applied in that case, is a somewhat dangerous one. The distinction between proving by parol, that the delivery of a contract was conditional, and that the contract itself contained a condition not expressed in the writing, is one founded more on refinement of logic than upon sound practical grounds. It endangers the salutary rule that written contracts shall not be varied by parol. Said ERLE, J., in *Pym* v. *Campbell* (1856), 6 E. & B. 370, in sustaining such a de-

fense, "I grant the risk that such a defence may be set up without ground; and I agree that a jury should therefore always look on such a defense with suspicion." And in all the cases where such a defense has been sustained, so far as we can discover, they have been cases strictly between the original parties, and where no one has changed his situation in reliance upon the contract and in ignorance of the secret oral condition attached to the delivery, and hence no question of equitable estoppel arose. Many of the cases have been careful to expressly limit the rule to such cases: *Benton* v. *Martin* (1865), 31 N. Y. 382; *Sweet* v. *Stevens* (1863), 7 R. I. 375.

Conceding the rule of *Westman* v. *Krumweide*, *supra*, to its full extent, there are certain well recognized doctrines of the law of equitable estoppel which render it inapplicable to the facts of the present case. This subscription agreement was not intended to be the sole contract of the defendant. It was designed to be also signed by other parties, and from its very nature the defendant must have known this. Each succeeding subscriber executed it more or less upon the faith of the subscriptions of others preceding his. The paper purports on its face to be a completed contract, containing all the terms and conditions which the subscribers intended it should. When this agreement was presented to others for subscription, defendant had not only signed it in this form, but he had also done what, under the facts, constituted to all outward appearances at least, a complete and valid delivery. He had placed it in the proper channel according to the ordinary and usual course of procedure, for passing it over to the corporation, when organized, and clothed Janney with all the *indicia* of authority to hold and use it for that purpose, without any other or further act on his part, untrammeled by any condition other than those expressed in the writing. In reliance upon this, others have not only subscribed to the stock but have since paid in a large share of it. The corporation has been organized and engaged in business, expending large sums of money, and contracting large liabilities, all upon the strength of these subscriptions to its stock, and in entire ignorance of this secret oral condition which defendant now claims to have attached to the delivery.

To permit defendant to relieve himself from liability on any such ground under this state of facts, would be a fraud on others who have subscribed and paid for stock; on the corporation which has been organized and incurred liabilities in reliance upon the subscriptions; and on creditors who have trusted it. The familiar principle of equitable estoppel by conduct applies, viz., where a person by his words or conduct wilfully causes another to believe in the existence of a certain state of facts, and induces him to act in that belief so as to alter his own previous condition, he is estopped from denying the truth of such facts to the prejudice of the other.

We have examined all of the numerous cases cited by the defendant's counsel, and fail to find one which, in our judgment, is analogous in its facts, or the law of which will cover the present case. The two which at first sight might seem most strongly in his favor are *Railroad Co.* v. *Palmer* (1865), 19 Wis. 574, and *Railroad Co.* v. *Hall* (1878), 1 Bradw. (Ill.), 612. But an examination of those cases will show that in neither did or could any question of estoppel arise, and in both the Court held that the person to whom the instrument was delivered after signature, was a stranger to it, so that it was strictly a delivery in escrow to a third party.

Cases are cited, where a surety signed a bond or non-negotiable note, and delivered it to the principal obligor, upon condition that it should not be delivered to the obligee until some other person signed it, and where, without such signature, the principal obligor delivered it to the obligee, and yet the courts held that the surety was not liable, although the obligee had no notice of the condition. Such cases usually, too, proceed upon the theory that a delivery to the principal obligor under such circumstances is a mere delivery in escrow to a stranger; the term "stranger," in the law of escrows, being used in opposition merely to the party to whom the contract runs. It may well be doubted whether in such cases, where the instrument is complete on its face, the courts have not sometimes ignored the law of equitable estoppel. No such defense would be allowed in the case of negotiable paper, and it is not clear why the distinction should be drawn on that line. The doctrine of estoppel rests upon totally different grounds, and

operates independently of negotiability, being founded upon principles of equity. But whether the cases referred to be right or wrong, we do not see that they are in point here. Our conclusion is that the Court erred in admitting the evidence objected to, and for that reason a new trial must be awarded.

Order reversed.

1. *The General Rule.*—The established rule of evidence, that a written contract is not to be contradicted or varied by evidence of a parol agreement or understanding, is applied to cases of subscription to the stock of corporations. One reason for so applying this rule is, that, if such evidence were admitted, it would tend strongly towards the commission of a fraud upon other subscribers to the stock: Angell and Ames on Corporations, Sec. 531; Waterman on Corporations, Sec. 193; Cook on Stockholders, Sec. 137.

This principle, enlarged by judicial construction into an equitable estoppel, is applied by the Court in the principal case. It was palpable that the admission of such evidence, for the purpose of a judgment in favor of the defendant, operated unjustly toward other subscribers, who had made their stock subscriptions and became bound thereby, and made payments thereon, in reliance upon the subscription of the defendant.

It is only where the evidence of the parol agreement tends to prove fraud, accident or mistake, that it can be admitted in evidence and considered: Cook on Stockholders, Sec. 137; Waterman on Corporations, Sec. 192; Angell & Ames on Corporations, Sec. 531.

The term "conditional subscription" does not apply to the parol contract set up by defendant in the principal case. Conditional subscriptions proper, are those only in which the condition is a part of the subscription. There are such conditions to the subscription in that case. But oral agreements, contemporaneous with a subscription, will not fall under this head; they are to be considered under the head of fraud, accident or mistake: Cook on Stockholders, Secs. 77, 137.

The release of other stockholders is no defence to an action on a subscription: Cook on Stockholders, Sec. 191.

In England, it has been held that, in such cases, the proper remedy of the subscriber, who complains of the violation of the parol agreement, is by action against the promoter who made the agreement with him: *Felgate's Case* (1865), 2 De G. J. and S. 456.

2. *Authorities Classified.*—The circumstance that the subscription in the principal case was given for the purpose of organizing a new corporation, furnishes ground for a distinction between the various cases that have previously been decided.

An examination of the authorities, with reference to this distinction, suggests this classification.

In the following named cases, the rule was applied to subscriptions, given before the organization of the corporation, for the purpose of promoting the particular corporation: *R. R. Co.* v. *Mason* (1857), 16 N. Y. 451 (attempt by subscriber to revoke subscription); *R. R. Co.* v. *Cross* (1859), 20 Ark. 443 (declaration by promoter as to location); *R. R. Co.* v. *Leach* (1857) 4 Jones (N. C.), 340; *Miller* v. *R. R. Co.* (1878), 87 Pa. 95 (location of road); *Caley* v. *R. R. Co.* (1876), 80 Id. 363; *Wight* v. *Shelby R. R.* (1855), 16 B.

Mon. (Ky.) 4 (a delivery of subscription claimed to be an escrow); *R. R. Co.* v. *Gammon* (1858), 5 Sneed (Tenn.) 567, 571 (that subscribers should have a voice in location of road); *R. R. Co.* v. *Bowser* (1864), 48 Pa. 29.

In the following named cases, the same rule was applied to subscriptions to an existing corporation: *Ferry Co.* v. *Jones* (1859), 39 N. H. 491, 497; *McClure* v. *R. R. Co.* (1879), 90 Pa. 269, 271; *McCarty* v. *R. R. Co.* (1878), 87 Id. 332; *Scarlett* v. *Academy of Music* (1876), 46 Md. 132, 149; *Cowith* v. *Culver* (1873), 69 Ill. 502, 506; *Gelpcke* v. *Blake* (1863), 15 Iowa 387; *Jack* v. *Naber* (1863), 5 Id. 450; *Downie* v. *White* (1860), 12 Wis. 176; *R. R. Co.* v. *Stevens* (1855), 6 Ind. 379; *R. R. Co.* v. *Pearce* (1867), 28 Id. 502; *R. R. Co.* v. *Brush* (1875), 43 Conn. 86.

3. *The Views of the Courts.*—In *Wight* v. *Shelby R. R.* (1855), 16 B. Mon. (Ky.) 4, the claim by the subscriber being that the delivery of his subscription was simply in escrow, and also that he had a parol condition as to the location of the road, the Court held that the party to whom the subscription was delivered, being one of the commissioners for the subscription to the road, could not receive it in escrow; for, to make it an escrow, required that the writing be put in the hands of a third party. The Court said as follows:

"The defense relied upon by Wight, that the subscription of stock made by him was left with one of the commissioners in the nature of an escrow, is wholly invalid. The commissioners were the persons appointed by the charter to receive and accept subscriptions of stock. A subscription received by them, even if such a writing could under any circumstances be made to assume the nature and attributes of an escrow, could not take that character, inasmuch as when it was received by them, it became just as obligatory on the party making it as a promissory note would be upon the maker who left it with the payee, or his agent. The well settled doctrine is, that to make a writing an escrow merely, it must be placed in the hands of a third person by the party making it, to be delivered to the other party on the happening of a specified contingency. Here the subscribers were the parties on one side, and the commissioners on the other. A subscription when made and received by the commissioners, could not, therefore, be a mere escrow, but became in law an absolute undertaking for the stock subscribed according to the provisions of the charter. So far as the defendants, or either of them, alleged that the subscription was conditional, and was not to be obligatory on them, unless the road was located on a certain route, it is only necessary to remark that the contract being in writing, parol proof is inadmissible, to alter its terms or to show that instead of being absolute as it purports to be, it was in reality conditional. The subscribers might have annexed a condition to the terms of their subscription, if they had thought proper to do so, and it would then have been with the commissioners to determine whether such conditional subscription of stock would be received; but not having done so, they cannot, according to the well established doctrine on the subject, allege or prove that the contract was different from that which is evidenced by the writing unless they can establish fraud or mistake in its execution."

In *Miller* v. *R. R. Co.* (1878), 87 Pa. 95, the Court said:

"Every one who signed after him, did so on the faith of his signature, * * * and to permit him now to set up a secret parol arrangement, by which he may be released whilst his fellows continue to be bound, would be any-

thing but just. As was said in the case of *Graff* v. *R. R. Co.* (1858), 31 Pa. 489, a subscription to a joint stock company is not only an undertaking to the company, but with all other subscribers."

In *R. R. Co.* v. *Gammon* (1858), 5 Sneed (Tenn.) 367, where the parol condition set up was, that the subscriber should have voice in the location of the road, the Court said: "By his subscription for a certain number of shares, at a certain sum, he became liable for the amount of his subscription, on the same principle that the maker of a promissory note renders himself liable. The subscription being equivalent to a promissory note, it is clear that parol evidence of previous or contemporaneous negotiations, stipulations or terms, not incorporated in the subscription paper, could not be admitted to vary or contradict the terms of the written instrument.

In *Ferry Co.* v. *Jones* (1859), 39 N. H. 491, the defendant set up a representation to him by another subscriber, not an officer, that the ferry to be built was to be a horse ferry; in fact, a steam ferry was built. It was held that the party making the representation was not an agent of the company, and that the company would not have been bound by the representation, even it he had been its agent. The Court said:

"Another question raised is, whether the representation made at the time the defendant and Somerby subscribed for stock, by the person who had the paper, was competent evidence to be considered, and if so, was it material? Did it or could it affect the case? We think it was not competent, and would not have been so, even if the person making it had been the agent of the company. It was only a verbal statement, and does not come within the rule stated in *White Mountains R. R.* v. *Eastman* (1856), 34 N. H. 124, where it was held that a contract, *in writing*, given back to a subscriber for stock, at the same time of the subscription, by an agent of the company authorized to contract, providing that the terms of the subscription might be modified in a certain way, might be valid as part of the original contract of subscription, as between the parties, provided it did not operate as a fraud upon others. But this case is more like *George* v. *Harris* (1829), 4 N. H. 533, where it was held that where a promise is direct, positive, unconditional, and in writing, parol evidence is inadmissible to contradict or vary such contract. And the further reason then stated also applies here, that the defendant's putting upon paper an unconditional promise to pay, may have induced others, not only to subscribe, but to pay, and his attempts now to shield himself by this private understanding may be a fraud upon others, who have thus been induced to subscribe and to pay. Parol agreements, made at the time of subscribing for stock, and inconsistent with the written terms of subscription, are inadmissible, inoperative and void: *Conn. & Pass. River R. R.* v. *Bailey* (1852), 24 Vt. 465."

In *McCarty* v. *R. R.* (1878), 87 Pa. 332, the subscriber alleged a parol condition, that the road was to be built to a certain point; and a further promise by the officers of the road to incorporate this condition into his subscription; so that the case turned on a question of fraud. The Court said as follows:

"Where subscriptions are made to the stock of a proposed public corporation, previous to and for the purpose of procuring a charter, any condition annexed thereto, whether written or parol, are void. But after the organization of the company, a condition is binding and obligatory, and ordinarily, this is so, though it rests in parol, if, except for such condition, the subscription

would not have been made. The latter part of this proposition is subject, however, to the qualification that the rights of co-subscribers are not affected thereby: *R. R.* v. *Bowser* (1864), 48 Pa. 29; *Caley* v. *R. R. Co.* (1876), 80 Id. 363; *Graff* v. *R. R. Co.* (1858), 31 Id. 489; and *Miller* v. *R. R. Co.* (1878), 87 Id. 95."

In *Corwith* v. *Culver* (1873), 69 Ill. 502, the defendant had never delivered the subscription. It had remained in his possession, and had never passed into the hands of the corporation. Defendant claimed that it was to be delivered only on condition that he could effect a certain loan, which he had failed to do. It was held to be a valid subscription. The Court said:

"The subscription by the defendant was absolute on its face; it is inadmissible to show that it was only conditional. The rule forbidding the introduction of parol evidence to explain a written instrument, meets with no exception in the case of a subscription paper for stock of a corporation: Angell and Ames on Corp., § 146; *Banet* v. *A. & S. R. R. Co.* (1851), 13 Ill. 509. Such a secret condition attached to the subscription, would be a fraud upon the other subscribers, and the subscription should be enforced without regard to it: *Downie* v. *White* (1860), 12 Wis. 176; *White Mount. R. R.* v. *Eastman* (1856), 34 N. H. 124; *Mann* v. *Cook* (1850), 20 Conn. 178; *Smith* v. *Heidecker* (1866), 39 Mo. 157."

In *R. R. Co.* v. *Brush*, 43 Conn. 86 the language of the Court was as follows:

"When Myers & Co. subscribed, the contract for building the road had not been executed. The subscription therefore was not then affected by the written contract. The parol agreement cannot, upon any principle, have the effect to vary or qualify the written contract of subscription. It is familiar and elementary law, that all negotiations between the parties, relating to the subject matter, are merged in the written contract. Neither party will, therefore, be permitted to prove by parol, a contract different from that expressed in the written instrument. Is it so that a party, for the purpose of relieving himself of an obligation, will be permitted to show by parol that this written contract is different from what it purports to be on its face? We are not aware of any principle of law that will justify such a proceeding."

4. *Delivery in Escrow.*—Among the cases above cited are the following, in which the question was, as in the principal case, one of a condition to the delivery of the subscription: *Wight* v. *R. R. Co.* (1855), 16 B. Mon. (Ky.) 4; *Corwith* v. *Culver* (1873), 69 Ill. 502.

There are two cases found in the books, in which the parol condition as to delivery, was allowed to defeat the subscription and excuse the subscriber from compliance; but each of these cases is one of subscription to the stock of an already existing corporation. These are the two named in the principal case: *R. R. Co.* v. *Palmer* (1865), 19 Wis. 574; *R. R. Co.* v. *Hall* (1878), 1 Bradw. (Ill.) 612.

In the Wisconsin case, the subscription was not signed by the supposed subscriber, but by another person for him, who was a promoter, not of the corporation, but of the particular subscription. The supposed subscriber authorized the delivery of this subscription, only upon certain conditions which had not been performed. The Court held, that as the promoter who received the subscription was not an agent of the company, he was therefore a third party; so that the principles as to a delivery in escrow were applicable. In the Illinois case, there was a conditional delivery of the subscription in escrow to the Director of the Railroad Com

pany; and the Court held that the facts of the case made this director a third party, so that the delivery was really in escrow.

There are other cases, seemingly analogous here, yet to be distinguished by their facts. In *Ticonic Water Co.* v. *Lang* (1874), 63 Me. 480, the question of delivery related to a proxy. One defendant had never subscribed to the stock at all; and he had delivered a proxy in escrow, which was considered in the case. *Cass* v. *Railway Co.* (1875), 80 Pa. 31, is not in point. It was a case of an existing corporation and a written condition in a subscription. The agent of the company took the subscription in escrow. It was held that this agent had no authority to accept the written condition, hence, there was no delivery. *Burrows* v. *Smith* (1853), 10 N. Y. 550, a case in equity, did not turn on the question of a parol condition to a written subscription. Plaintiff did not sue on the written subscription; his suit was an effort to set up another and different subscription by estoppel, against which the Equity Court let in evidence of parol stipulations.

The principal case is the first one in which an appellate court has passed upon the question of an attempted condition to the delivery of a stock subscription given for the purpose of promoting a new corporation.

5. *The Status of the Subscription Agreement.*—The ruling in the principal case as to the double character of the subscription agreement, is well supported by authority. It is a general rule that an agreement to take shares in order to form a corporation, is a continuing offer, subject to acceptance by the corporation after it is formed: 1 Morawetz on Corporations, Sec. 47, 48, 51. The subscription inures to the benefit of the corporation when formed: Waterman on Corporations, Sec. 177; *R. R. Co.* v. *Cammon* (1858), 5 Sneed (Tenn.) 567; *Taggart* v. *R. R. Co.* (1866), 24 Md. 563; *R. R. Co.* v. *Clayes* (1848), 21 Vt. 30; *R. R. Co.* v. *Dummer* (1855), 40 Me. 172; *R. R. Co.* v. *Mason* (1857), 16 N. Y. 451.

The subscriber's interest in, and his right to, a share in the operations of the company, are the consideration for his contract: 1 Morawetz on Corporations, Sec. 56; *R. R. Co.* v. *Robbins* (1877), 23 Minn. 439; *Music Hall Co.* v. *Cary* 116 Mass. 471; *R. R. Co.* v. *Clayes*, 31 Vt. 30.

The corporation is the proper party to bring suit on such subscription: 1 Morawetz on Corp., Sec. 50; Cook on Stockholders, Sec. 67; *Music Hall Co.* v. *Cary* (1874), 116 Mass. 471; *Upton* v. *Tribilcock* (1875), 91 U. S. 45; *Chubb* v. *Upton* (1877), 95 Id. 665.

Mr. Taylor's full statement of the doctrine is as follows:

"The corporation having been formed, and A, not having in the meantime withdrawn from the agreement, if B, C and D, etc., take and pay for their shares as agreed, they (or the corporation, if it shall appear to have been the intention that the corporation should have the right to enforce the promise) can then force A to take and pay for his shares as well; for if, relying on A's promise, or, more strictly speaking, unwithdrawn offer to take shares, B, C and D, etc., have actually taken shares themselves, they have thereby accepted A's unwithdrawn offer, by performing that act, which was intended to be, when performed, a valid consideration, which should convert A's unwithdrawn offer into a binding promise; and in truth, therefore, they have thus transformed A's unwithdrawn offer into a binding promise, the performance of which may be enforced by the parties who have themselves performed, or by the corporation, if such was the intention:" Taylor on Corporations, 93.

The Supreme Court of Pennsylvania declares as follows:

"The contract of subscription is not only with the company, but also with all the other shareholders; hence, the subscriber may not set up even fraud of the directors, in order to defeat his contract:" *Caley* v. *R. R. Co.* (1876), 80 Pa. 363, 368; *Graff* v. *R.R. Co.* (1858), 31 Id. 489.

JAMES O. PIERCE.

Minneapolis, Minn.

ABSTRACTS OF RECENT DECISIONS.

ADMIRALTY.

Contract to stow, or load, a vessel, is not a maritime contract, and cannot be enforced in admiralty. *Danace* v. *The Magnolia*, U. S. C. Ct. E. D. La., Jan. 22, 1889.

Stevedore's claim for services in loading or unloading a vessel is a maritime contract, within the principles of admiralty jurisdiction, but no lien on the vessel is allowed for such services rendered in the home port. *Mygatt* v. *The Gilbert Knapp*, U. S. D. Ct. E. D. Wis., Jan. 7, 1889.

AGENCY.

Commission broker, who, with knowledge of its unlawful character, negotiates a gambling contract, becomes a *particeps criminis*, and cannot recover for services rendered or losses incurred by him in forwarding the illegal undertaking. *Kahn* v. *Walton*, S. Ct. Ohio, Jan. 8, 1889.

Commissions are earned by a real estate broker, where the agreement of sale provides that the land is to be conveyed within fifteen days, on condition that one holding a mortgage thereon shall release the vendor from liability, and that, if the vendee shall fail to pay the purchase money at the end of the fifteen days, any money paid in advance shall be forfeited, although the mortgage is not released nor the purchase money paid. *Ward* v. *Cobb*, S. Jud. Ct. Mass., Feb. 28, 1889.

Undisclosed principal, for whom one in reality carries on business, although in the latter's own name, is liable for goods sold to the agent on credit, notwithstanding the fact that secret orders had been given not to buy on credit. *Hubbard* v. *Tenbrook*, S. Ct. Pa., Feb. 25, 1889.

ATTORNEY-AT-LAW.

Lien upon judgment recovered in favor of his client, for the fees of an attorney, does not extend to property purchased by the client with the proceeds of such judgment; and when the attorney consents that the amount of the judgment shall be paid to the client, stating his willingness to look to the latter alone for his fees, he thereby waives any lien he might have had on the proceeds. *Goodrich* v. *McDonald*, Ct. App. N. Y., Jan. 15, 1889.